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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
AUG 2 1 2003

OFFICE OF
MANAGING DIRECTOR

Mr. Barry D. Wood
Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036

Re: Request for Waiver of FY 2002 Regulatory Fee
Fee Control No.: 00000RROG-03-077

Dear Mr. Wood:

This is in response to your February 21, 2003 petition for reconsideration of the January 22, 2003 ruling denying the request for waiver of the regulatory fee for Fiscal Year (FY) 2002 in the amount of $4,100 submitted on behalf of AM station KMRI, licensed to KMRI Radio, LLC.

KMRI's waiver request was denied because it did not make a compelling showing of financial hardship to support the claim that KMRI was unable to pay the regulatory fee. In support of its waiver request, KMRI submitted copies of its financial statements for 1999, 2000, 2001, and the first seven months of 2002. After reviewing this information, we noted that although KMRI reported a loss of $46,633 in 2001, this loss was almost entirely attributable to depreciation expense of $46,506. Moreover, although KMRI's most recent statement for the period January through July 2002 showed an operating loss of $21,517, we pointed out that this loss resulted solely from depreciation expense of $24,362. We explained that in determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Depreciation expense reduces gross income for tax purposes but does not affect cash flow and represents money that is considered to be available to pay the regulatory fee. Thus KMRI had money from its deduction for depreciation from which it could pay the FY 2002 fee.

In support of your petition for reconsideration, you assert that our ruling did not take account of KMRI's entire set of financials and its public service. Specifically you assert that the licensee lost money in 1999 due to the purchase that year of items worth $15,900 that were largely sold in subsequent years and ended the first seven months of 2002 with only $1,726 in the bank.[1] You also state that no distributions have been paid to KMRI's sole owner and that we improperly focused on the depreciation figure. You further contend that KMRI is supported by listener contributions and the donation of time from volunteers. Unlike other broadcasters, you assert, KMRI does not present "reality" or

[1] KMRI's Statement of Cash Flow for the period ended July 31, 2002, however, lists Closing Cash of $3,440.

"trash" programming to titillate its audience. You add that employee salaries are paid by a related entity, Alpha & Omega Communications, LLC, and that this contribution "wipes out" the availability of funds from depreciation.[2]

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In general, we permit waivers of regulatory fees only "on a case by case basis in compelling and extraordinary circumstances upon a showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs." 9 FCC Rcd 5333, 5344 ¶ 29. It is "incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public." 10 FCC Rcd at 12759, 12762 ¶ 13. A regulatee must establish that it has met these standards and is entitled to a waiver or reduction of the regulatory fee requirement for the particular fiscal year in question.[3]

As requested, we reviewed the entire financial showing submitted with your waiver petition and conclude on further consideration that a reduction of the FY 2002 regulatory fee is warranted. Although in 1999 and 2000 KMRI suffered losses that were only partially offset by depreciation expense so that it experienced negative cash flow for those years, the depreciation component has grown each year in relation to the overall loss. Thus in 2001 all but $127 of the loss was offset by depreciation, and in the period most relevant to KMRI's current fee obligation, the first seven months of 2002, the depreciation figure exceeded the loss by $2,843. In other words, KMRI had positive, albeit small, cash flow in 2002 from which it could at least partially pay the fee. Thus, although KMRI has not made a compelling showing that the FY 2002 fee obligation should be waived, our review of KMRI's submission persuades us that the fee should be reduced. Accordingly your petition for reconsideration is granted to the extent that the FY 2002 fee is reduced from $4,100 to $2,000.

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[2] You state that detailed financial information on this point is in storage and will be submitted in a supplemental filing, but to date no supplement has been received.

[3] The quality of KMRI's programming content, however commendable, is not relevant to the licensee's obligation to pay regulatory fees.

Payment of this fee is now due. The fee payment must be filed together with a copy of the FCC Remittance advice form 159 (copy enclosed) within 30 days from the date of this letter. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark A. Reger
Chief Financial Officer

Enclosure

00000 RR06-03-077

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

FEB 2 1 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of	)	
	)	
KMRI Radio LLC.	)	
	)	Fee Control No. 0000RROG-03-044
Licensee of Station KMRI	)	
	)	
Salt Lake City, Utah	)	

To: Office of Managing Director

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PETITION FOR RECONSIDERATION

On September 25, 2002, KMRI Radio, LLC. ("KRL") requested a waiver of the regulatory fee for Fiscal Year 2002 with respect to radio station KMRI, Salt Lake City, Utah. In the waiver request, KRL showed that it was operating on a proverbial shoestring and could not afford to pay the hefty regulatory fee, in excess of four thousand dollars, assessed by the Commission.

On January 22, 2003, the Office of Managing Director wrote to counsel for KMRI to advise that the OMD did not find that KRL had made a compelling case of financial hardship. KRL, by counsel, hereby petitions for reconsideration of that determination.

In particular, while the OMD noted that in 2001 KRL had suffered a loss of $46,633, the OMD noted that this loss was "almost entirely attributable to depreciation expense of $46,506." Jan. 22 letter at 1. The OMD took a similar view of the financial statement

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provided for the first seven months of 2002, when the loss shown by the financial statement was slightly less than the amount attributed to depreciation. The OMD thus concluded that "KMRI had money from its deduction for depreciation from which it could pay the fee."

This analysis fails to take into account the implications of entire set of financials provided by KRL, as well as the radio station's public service. KRL is not being operated for the purpose of generating money for the federal treasury, not did Congress contemplate that, in enacting the regulatory fee requirement, station licensees would become serfs of the federal government all of whose meager earnings (if any) would be subject to seizure by the sovereign. That is why specific provision was made for waiver of the regulatory fee requirement in cases where to do so would impose a financial hardship.

The statement that "KMRI had money from its deduction for depreciation from which it could pay the fee" cannot be squared with the balance sheet on that same statement, which shows that KRL ended the relevant period with only $1,726 in the bank. Thus, this minimal cash level -- less than half of the regulatory fee -- is the best evidence as to whether "KMRI had money from which it could pay the fee."[1] Inasmuch as the OMD paid no attention to those figures in order to concentrate on the depreciation number alone, there is ample basis here for reconsideration.

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[1] No distributions have been paid to KRL's sole owner, Pat Openshaw, at any time. Accordingly, KRL's modest cash balance is not the result of her having stripped income from the operation.

Indeed, looking at the station's financial situation as a whole in any kind of objective light, the January 22 determination from the OMD cannot be said to respect the intent of Congress or of the full Commission in these matters. Could not the OMD have recognized that the entire GROSS revenues of the station in its best year are less than half of the salary of a single FCC commissioner? How many radio stations in America could sustain service at such modest revenue levels?

Might not the OMD now stop to reflect on how it is that KMRI stays on the air? This is not a money-grubbing operation of the sort that serves up "reality" television to titillate the lowest common cultural denominator in a never-ending quest for ratings-driven ad revenue. Let the purveyors of trash television and shock jock radio pay whatever regulatory fees the FCC levels, as they make little otherwise in the way of public interest contributions. KMRI, in contrast, is devoted to reaching the better angels of its listeners nature and resolving the social and personal problems that torment so many people. Is that service to be placed in jeopardy merely because the federal maw has not yet swallowed enough trillions?

In the January 22 letter, there is no acknowledgment of the fact that KMRI is kept on the air only through the contributions of listeners and generous donations of time from volunteers. That is because the radio station did not have the funds with which to pay any salaries to those who work at the station.

We hereby apologize for the fact that we did not go into greater detail in the waiver request in this regard. Little did we suppose but that the OMD would be sensitive to the fact that a radio station operating on gross revenues of less than $50,000 in an entire year was suffering some sort of financial hardship.

We did note that a modest amount of wage expense was posted to the financial statements in 1999, but nothing in 2001. We would suggest that, based on that comment, the OMD, in its pursuit of the public interest, could have concluded that the reason KMRI's statements show such ridiculously low expense levels is that the facility is operating under severe financial constraints. If that did not occur to the OMD previously, we hereby call the attention of the Office to that fact.

Two employees are compensated for their work at KMRI, but because the radio station licensee has no money with which to pay them, their salaries have come from a related entity, Alpha & Omega Communications, LLC. (Alpha & Omega similarly loses money because it is focused on public service rather than profit making.) Adding in the contribution Alpha made to keep KMRI on the air to the KRL expense ledger completely wipes out any perceived availability of funds from KRL's depreciation deduction.[2]

Further, the January 22 letter fails to recognize that depreciation is not some mythical construct that can automatically be equated to free cash income available to the federal Treasury. Rather, depreciation represents a recognition that equipment and other assets wear out over time. If a business owner does not create a reserve for replacement of equipment, she will be unable to fund necessary repairs and equipment purchases when the need arises.

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[2] Detailed financial information on this point is in storage but is being retrieved by the licensee's accountant. It will be supplied as a supplement to this petition.

The FCC has long recognized that adequate funding is required if radio licensees are to provide service to the public. Service would be jeopardized if every cent of net cash flow had to be turned over the federal government through the imposition of regulatory fees. Yet that is exactly what the January 22 letter demands. It would be irresponsible for KRL not to set aside at least a few shekels from current operations in order to ensure the technical viability of KMRI.

If, as the OMD demands, all of KMRI's funds are to be swept away to pay the regulatory fee, how is the licensee to afford the purchase of a new transmitter tube when the current one fails? How is it in the public interest to strip a station of its ability to maintain the technical viability of the operation?

A further point of concern for the OMD should have been the selective use of revenue and expense data in a snapshot period to show a "paper profit" in one period, while ignoring greater losses from earlier periods that continue to constrain the station's ability to pay the regulatory fee. Specifically, in 1999 the licensee purchase $15,900 worth of items to be sold, with a substantial proportion of the sales of those items coming in later years. The losses of 1999 are entirely ignored in the January 22 letter, with its focus on the perceived "revenue" of later years. Yet in reality the licensee's experience over the entire set of years must be considered in order to understand the depth of financial hardship with which this radio station is contending.

Given the financial circumstances under which KMRI operates, this clearly is an station of the sort that the full Commission intended to exempt from the payment of regulatory fees. Simple justice requires the OMD to consider these circumstances in connection with the waiver request..

In light of the foregoing, KRL requests that the OMD reconsider the January 22 letter and waive the regulatory fee for 2002 for station KMRI.

Respectfully submitted,

KMRI RADIO, LLC

By: Barry D. Wood
Barry D. Wood

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Its counsel

Dated: February 21, 2003